

### Remarks

Applicant has filed the amendments above and the Remarks below in response to the Examiner's rejection of all pending claims in the Office Action issued April 20, 2005. Applicant respectfully requests that the Examiner consider the amended claims and pass the application into allowance.

### Status of the Claims

The Examiner has rejected claims 1 to 3. Claims 1 and 2 have been amended. No claims have been added, withdrawn, or cancelled. Accordingly, claims 1 to 3 are presented for Examiner's consideration.

The Examiner has rejected claims 1 to 3 under 35 U.S.C. § 102(e) as being anticipated by both U.S. Patent Nos. 6,327,837 to Van Erden (the '837 patent) and 6,360,513 to Strand et al. (the '513 patent).

Claim 1 was amended to define a chain of packages having a transverse slider mounted therein and containing one side edge formed from a web fold and one open side edge. Support for these amendments is found in the figures and the specification in the following paragraphs: [0040] (chain of bags); [0037] (unsealed bag edge); [0024], [0028], [0032] to [0034], and Figures 4 and 5, (zipper closure mounted transversally on one half of film web); [0018], [0034] and Figure 4 (film web folded in half to form one folded side edge, one open side and enfold the zipper and slider, and form top and bottom edge by transverse sealing folded web).

Claim 2 was amended to define a package of claim 1 further containing a fill and a sealed side edge, wherein individual packages may be separated from the chain before or after filling and edge sealing. Support for this amendment is found in the specification at paragraph [0040].

### **Summary of The Invention**

The present invention is a package and a chain of packages having a transverse zipper and one open side, permitting the provision of a package having a fill and edge-seams, which are visually more appealing and easier to handle than packages having a central fin seal. Moreover, the open side edge feature of the present inventive package permits the provision of individual units for filling and sealing which is not feasible in a package utilizing a central fin seal, such as are produced in a vertical form, fill, and seal machine. Finally, the inventors were the first to recognize that the present invention package permits the provision of packages having a reclosable zipper closure, one side edge formed by folding over the web from which the package is formed and an open side edge that can be filled and sealed without placing the stress imparted by the filling operation on the reclosable and tamper-evidencing features of the package or on a welded seam in the package.

Next is summarized the art cited by the Examiner in support of the Examiner's rejection of the claims.

### **Summary of U.S. Patent 6,327,837 to Van Erden (the '837 patent)**

U.S. Patent No. 6,327,837 to Van Erden (the '837 patent) issued December 11, 2001 on an application filed July 15, 1999. The '837 patent discloses the provision of a package on a vertical fill, form, and seal machine which contains a transversally mounted zipper closure with slider and a fin seal. The '837 patent does not describe or suggest the provision of an individual package or a chain of packages having one open side edge and a side edge formed from a webfold.

### **Summary of U.S. Patent 56,360,513 to Strand et al. (the '513 patent)**

U.S. Patent No. 56,360,513 to Strand et al. (the '513 patent) issued March, 26, 2002 on an application filed November 1, 1999. The '513 patent discloses the provision of a package containing a reclosable zipper and slider assembly and having a

tamper evident shroud over the zipper and slider assembly by affixing a continuous chain of assembled reclosable zipper and slider proximal to the centerline of a web and running longitudinally to the web, folding the web over along the center line to create a shroud, transversally sealing the web at intervals to form sealed package side edges, providing a fill to the package through the unsealed bottom edge, then sealing the bottom edge and providing individual packages by severing the chain between adjacent package side seals. The '513 patent does not describe or suggest the provision of a single package or chain of packages having a side edge formed from a web fold, an open side edge and a sealed bottom edge.

**Discussion of the Examiner's Rejection Under 35 U.S.C. §102**

The pertinent parts of 35 U.S.C. § 102 state:

*A person shall be entitled to a patent unless –*

*(e) the invention was described in ... (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent"*

To assert a finding of anticipation, the cited reference must disclose each and every element of the claimed invention, *In re Spada* 911 F.2d 705, 708, 15 U.S.P.Q. 2d (BNA) 1655, 1657 (Fed. Cir. 1990); *Schering Corporation v. Geneva Pharmaceuticals, Inc.* 339 F.3d 1373, 1377 quoting *Lewmar Marine, Inc. v. Barient, Inc.*, 827 F.2d 744, 757 (Fed. Cir. 1987). As discussed above, neither U.S. Patent No. 6,327,837 to Van Erden (the '837 patent) nor U.S. Patent No. 6,360,513 to Strand et al. (the '513 patent), each cited by the Examiner in support of separate rejections under 35 U.S.C. § 102(e), describe or suggest the provision of an individual package or chain of packages having a reclosable zipper closure, a side edge formed from a fold in the web from which the package was made, sealed top and bottom edges and an open side edge. Moreover, neither describes or suggests a package resulting from sealing the open side edge.

Turning to the Examiner's rejection based on the '837 patent, as discussed above, the disclosure of the '837 patent is directed to the provision of packages on a vertical form, fill, and seal machine (FFS machine), which, if used to provide a package with a transverse mounted zipper closure can not be utilized to provide a package having an unscaled edge and an edge formed from a fold in the web. As is known, the vertical FFS machinery provides a package having a central fin seal portion on the package which must be in place prior to establishing the transverse seals defining the bottom and top of the package. As is known also, a vertical FFS machine can not be utilized to provide a side-filled package having a transversally mounted zipper and a side edge formed from a web fold. Accordingly, the '837 patent fails to describe or suggest at least two elements of the present invention, as defined in, for example, claim 1 of the present application. Therefore, the '837 patent can not be said to anticipate the package of the present invention as defined in claims 1 to 3 of the present application. Accordingly, the Examiner is requested, respectfully, to withdraw the rejection based on the '837 patent.

In the same manner, as discussed above, the '513 patent describes the provision of a tamper-evident feature which envelopes a reclosable zipper closure longitudinally. As described in the '513 patent, the subject package is formed by mounting a continuous strip of zipper closure longitudinally parallel to the centerline of the web of plastic from which the package is made and folding the web longitudinally about its center line. A package having a side edge comprising a longitudinal web fold is inapposite to a teaching of a package having a top edge comprising a longitudinal web fold. Moreover, the package described in the '513 patent requires a continuous strip of zipper closure material. The '513 patent does not describe or suggest a package made from discrete sections of zipper closure. Accordingly, the '513 patent fails to disclose or suggest at least two elements of the present invention package, as described in, for example, claim 1 of the present application. Therefore, the '513 patent can not be said to anticipate the present invention, and moreover, the '513 patent teaches against these aspects of the

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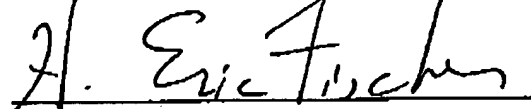
present invention package. Accordingly, the Examiner is requested, respectfully, to withdraw the rejection based on the '513 patent.

In view of the foregoing amendments and arguments, it is believed that the present application is now in a condition for allowance. The Examiner is therefore requested, respectfully, reconsider the amended claims and pass the application into allowance. The Examiner is invited to telephone applicant's undersigned attorney to discuss any outstanding issues or to suggest changes of a formal nature to place this application in better condition for allowance.

No fees are believed to be due in connection with this Reply. However, if any fees are due, the Commissioner is hereby authorized to charge any fees required to Deposit Account No. 02-2556

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PATENT TRADEMARK OFFICE

Respectfully submitted,



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